

J. Fuste  
CR. 97-91

**CERTIFIED COPY**  
**United States Court of Appeals**  
**For the First Circuit**

No. 05-1128

↓  
#1645, #1647

UNITED STATES OF AMERICA,

Appellee,

v.

YAMIL H. KOURI-PEREZ,

Defendant, Appellant.

Before

Selya, Circuit Judge,  
Campbell, Senior Circuit Judge,  
and Lipez, Circuit Judge.

JUDGMENT

Entered: May 4, 2006

Appellant has appealed the denial of a motion filed pursuant to Fed. R. Crim. P. 35(b). See United States v. McAndrews, 12 F.3d 273, 277 (1st Cir. 1993) (holding that the denial of a Rule 35(b) motion is appealable). Shortly after appellant filed his notice of appeal from this denial, however, the district court purported to reconsider that decision, to vacate the order of denial, and to grant a sentence reduction. In view of the district court's evident reconsideration of its initial denial, the parties do not press the issue as to whether that denial was an abuse of discretion and we do not address it.

The parties correctly concede that the timely filing of the notice of appeal from the denial of the Rule 35(b) motion ousted jurisdiction from the district court and it was without authority to sua sponte reconsider and grant a reduced sentence. See United States v. DiStasio, 820 F.2d 20, 23 (1st Cir. 1987). Citing McAndrews and DiStasio for the proposition that a criminal

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defendant may appeal the adequacy of a sentence reduction granted pursuant to Rule 35(b), appellant complains that the extent of the purported reduction is too meager, but we have no cause to review at this time the *merits* of a decision which, as a threshold matter, we conclude that the district court had no jurisdiction to enter. Accordingly, we do not do so.

The December 1, 2004 Order of the district court denying the Rule 35(b) motion is vacated and the matter is remanded to the district court for reconsideration of the Rule 35(b) motion. We decline to direct in advance that reconsideration must be undertaken by a different district court judge.

So Ordered.

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AND IN MY LEGAL CUSTODY.

FIRST CIRCUIT COURT OF APPEALS  
BOSTON, MA

By: [Signature] Date: 5-4-6

By the Court:

Richard Cushing Donovan, Clerk.

[Signature]

By: \_\_\_\_\_  
Operations Manager.

[Cert. cc: Hon. Jose A. Fuste and Frances Rios de Moran, Clerk, U.S.D.C. of Puerto Rico, cc: Messrs: Castro-Lang, Perez-Sosa, Bonilla, Ms. Melendez Rivera, Ms. Butler and Ms. Vargas-Vera]